

By Senator Clary

7-1347A-02

1 A bill to be entitled
2 An act relating to consumer protection;
3 creating the "Florida Fair Lending Act";
4 defining terms; prohibiting specified acts by
5 lenders with respect to high-cost home loans;
6 requiring notice and disclosures to borrowers;
7 preempting regulation of high-cost home loans
8 to the state; prescribing duties of the
9 Department of Banking and Finance with respect
10 to enforcement of the act; providing
11 severability; providing an effective date.

13 Be It Enacted by the Legislature of the State of Florida:

15 Section 1. Short title.--This act may be cited as the
16 "Florida Fair Lending Act."

17 Section 2. Definitions.--As used in this act, the
18 term:

19 (1) "Affiliate" means any company that controls, is
20 controlled by, or is in common control with another company,
21 as set forth in 12 U.S.C. s. 1841, et seq., as from time to
22 time amended, and the regulations adopted thereunder.

23 (2) "Annual percentage rate" means the annual
24 percentage rate for the loan calculated according to the
25 provisions of 15 U.S.C. s. 1606 and the regulations adopted
26 thereunder by the Federal Reserve Board.

27 (3) "Borrower" means any natural person obligated to
28 repay a loan, including a coborrower, cosignor, or guarantor.

29 (4) "Bridge loan" means a loan with a maturity of less
30 than 18 months which only requires the payment of interest

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1 until such time as the entire unpaid balance is due and
2 payable.

3 (5) "High-cost home loan" means a home loan as defined
4 in 15 U.S.C. s. 1602(aa) as from time to time amended and
5 regulations adopted thereunder.

6 (6) "Home loan" means a loan or agreement to extend
7 credit made to a natural person which loan is secured by a
8 deed to secure debt, security deed, mortgage, security
9 instrument, deed of trust, or other document representing a
10 security interest or lien upon any interest in a residential
11 property for one to four families or a manufactured home when
12 secured in conjunction with the real property on which the
13 manufactured home is located, which is located in this state,
14 regardless of where made, including the renewal or refinancing
15 of any such loan.

16 (7) "Lender" means any person who makes a high-cost
17 home loan or acts as a mortgage broker or lender finance
18 company, or retail installment seller with respect to a
19 high-cost home loan.

20 (8) "Make a high-cost home loan" means that a lender
21 or mortgage broker, finance company, or retail installment
22 seller that is the obligee to whom the obligation is initially
23 payable on the face of the note or contract regularly extends
24 consumer credit for mortgage loans which is subject to a
25 finance charge.

26 (9) "Residential property" means improved real
27 property used or occupied as the principal residence of a
28 natural person. Such term does not include rental property or
29 a second home or manufactured home when not secured in
30 conjunction with the real property on which it is located.

31 Section 3. Prohibited Acts.--

1 (1) PREPAYMENT PENALTIES.--

2 (a) A high-cost home loan may not contain terms that
3 require a borrower to pay a prepayment penalty for paying all
4 or part of the loan principal before the date on which the
5 payment is due.

6 (b) Notwithstanding paragraph (a), a lender making a
7 high-cost home loan may include in the loan contract a
8 prepayment fee or penalty, for up to the first 36 months after
9 the date of consummation of the loan, if:

10 1. The borrower has also been offered a choice of
11 another product without a prepayment penalty.

12 2. The borrower has been given, at least 3 business
13 days before the loan consummation, a written disclosure of the
14 terms of the prepayment fee or penalty by the lender,
15 including the benefit the borrower will receive for accepting
16 the prepayment fee or penalty through either a reduced
17 interest rate on the loan or reduced points or fees.

18 (2) DEFAULT INTEREST RATE.--A high-cost home loan may
19 not provide for a higher interest rate after default on the
20 loan. However, this subsection does not apply to interest rate
21 changes in a variable rate loan otherwise consistent with the
22 provisions of the loan documents, provided that the change in
23 interest rate is not triggered by a default or the
24 acceleration of the interest rate.

25 (3) BALLOON PAYMENTS.--A high-cost home loan having a
26 term of fewer than 5 years may not contain terms under which
27 the aggregate amount of the regular periodic payments would
28 not fully amortize the outstanding principal balance. However,
29 this subsection does not apply when the payment schedule is
30 adjusted to account for the seasonal or irregular income of

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1 the borrower or if the purpose of the high-cost home loan is a
2 bridge loan.

3 (4) NEGATIVE AMORTIZATION.--A high-cost home loan may
4 not contain terms under which the outstanding principal
5 balance will increase at any time over the course of the loan
6 because the regular periodic payments do not cover the full
7 amount of the interest due.

8 (5) PREPAID PAYMENTS.--A high-cost home loan may not
9 include terms under which more than two periodic payments
10 required under the loan are consolidated and paid in advance
11 from the loan proceeds provided to the borrower.

12 (6) EXTENDING CREDIT WITHOUT REGARD TO THE PAYMENT
13 ABILITY OF THE BORROWER.--A lender is prohibited from a
14 pattern or practice of extending high-cost home loans to
15 borrowers based upon the borrower's collateral without regard
16 to the borrowers' ability to repay the loan, including the
17 borrowers' current and expected income, current obligations,
18 and employment.

19 (7) PAYMENTS TO A HOME CONTRACTOR.--A lender shall not
20 make any payments to a contractor under a home improvement
21 contract from amounts of a high-cost home loan other than:

22 (a) In the form of an instrument that is payable to
23 the borrower or jointly to the borrower and the contractor; or

24 (b) At the election of the borrower, by a third-party
25 escrow agent in accordance with terms established in a written
26 agreement signed by the borrower, the lender, and the
27 contractor before the date of payment.

28 Section 4. Required disclosures for high-cost home
29 loans.--

30 (1) DISCLOSURES.--In addition to other disclosures
31 required by law and in conspicuous type:

1 (a) Notice to borrower.--A lender making a high-cost
2 home loan shall provide a notice to a borrower in
3 substantially the following form:

4 If you obtain this high-cost home loan, the lender will
5 have a mortgage on your home. You could lose your home and any
6 money you have put into it if you do not meet your obligations
7 under the loan.

8 Mortgage loan rates and closing costs and fees vary
9 based on many factors, including your particular credit and
10 financial circumstances, your employment history, the
11 loan-to-value requested, and the type of property that will
12 secure your loan. The loan rate and fees could also vary based
13 upon which lender or broker you select. As a borrower, you
14 should shop around and compare loan rates and fees.

15 You should also consider consulting a qualified
16 independent credit counselor or other experienced financial
17 advisor regarding the rates, fees, and provisions of this
18 mortgage loan before you proceed. A list of qualified
19 counselors is available by contacting the _____.

20 You are not required to complete this agreement merely
21 because you have received these disclosures or have signed a
22 loan application.

23 Borrowing for the purpose of debt consolidation can be
24 an appropriate financial management tool. However, if you
25 continue to incur significant new credit card charges or other
26 debts after this high-cost home loan is closed and then
27 experience financial difficulties, you could lose your home
28 and any equity you have in it if you do not meet your mortgage
29 loan obligations.

30 Remember that property taxes and homeowners' insurance
31 are your responsibility. Not all lenders provide escrow

1 services for these payments. You should ask your lender about
2 these services.

3 Also, your payments on existing debts contribute to
4 your credit rating. You should not accept any advice to ignore
5 your regular payments to your existing creditors.

6 (b) Annual percentage rate.--The lender shall
7 disclose:

8 1. In the case of a fixed mortgage, the annual
9 percentage rate and the amount of the regular monthly payment.

10 2. In the case of any other credit transaction, the
11 annual percentage rate, the amount of the regular monthly
12 payment and the amount of any balloon payment permitted under
13 this section, a statement that the interest rate and monthly
14 payment may increase, and the amount of the maximum monthly
15 payment based upon the maximum interest rate allowed pursuant
16 to law.

17 (c) Notice to purchasers and assignees.--Each
18 high-cost home loan shall contain the following notice:

19 Notice: This is a mortgage subject to the provisions of
20 the Florida Fair Lending Act. Purchasers and assignees of this
21 mortgage could be liable for all claims and defenses with
22 respect to the mortgage which the borrower could assert
23 against the lender.

24 (2) TIME OF THE DISCLOSURE.--

25 (a) The disclosure required by this subsection must be
26 given not less than 3 business days before the consummation of
27 the high-cost home loan.

28 (b) After disclosure is made a creditor may not change
29 the terms of the extension of credit if such changes make the
30 disclosures inaccurate unless new disclosures are provided
31 which meet the requirements of this section.

1 (c) A lender may provide new disclosures pursuant to
2 paragraph (b) by telephone if:

- 3 1. The change is initiated by the borrower; and
4 2. At the consummation of the high-cost home
5 loan: the lender provides the disclosures in writing to the
6 borrower and the lender and the borrower certify in writing
7 that the new disclosures were provided by telephone no later
8 than 3 days before the consummation of the high-cost home
9 loan.

10 Section 5. Powers and duties of the Department of
11 Banking and Finance; investigations; injunctions; orders.--

12 (1)(a) The Department of Banking and Finance is
13 responsible for the administration and enforcement of this
14 act.

15 (b) The department may adopt rules pursuant to
16 sections 120.536(1) and 120.54, Florida Statutes, to implement
17 this act. The department may adopt rules to allow electronic
18 submission of any forms, documents, or fees required by this
19 act.

20 (2)(a) The department may conduct an investigation of
21 any person whenever the department has reason to believe, upon
22 complaint or otherwise, that any violation of this act has
23 occurred.

24 (b) Any person having reason to believe that a
25 provision of this act has been violated may file a written
26 complaint with the department setting forth the details of the
27 alleged violation.

28 (3)(a) The department may bring an action, through its
29 own counsel in the name and on behalf of the state, against
30 any person who has violated or is about to violate any
31 provision of this act, or any rule or order of the department

1 issued under the act, to enjoin the person from continuing in
2 or engaging in any act in furtherance of the violation.

3 (b) In any injunctive proceeding, the court may, on
4 due showing by the department, issue a subpoena or subpoena
5 duces tecum requiring the attendance of any witness and
6 requiring the production of any books, accounts, records, or
7 other documents and materials that appear necessary to the
8 expeditious resolution of the application for injunction.

9 (4) The department may issue and serve upon any person
10 an order to cease and desist and to take corrective action
11 whenever the department has reason to believe the person is
12 violating, has violated, or is about to violate any provision
13 of this act, any rule or order of the department issued under
14 this act, or any written agreement between the person and the
15 department. All procedural matters relating to issuance and
16 enforcement of cease and desist orders are governed by the
17 Administrative Procedure Act.

18 Section 6. General rule.--All political subdivisions
19 of this state, including home-rule municipalities, are
20 prohibited from enacting and enforcing ordinances,
21 resolutions, and rules pertaining to the financial or lending
22 activities of persons who:

23 (1) Are subject to the jurisdiction of the Department
24 of Banking and Finance, including for activities subject to
25 this chapter;

26 (2) Are subject to the jurisdiction of the Office of
27 Thrift Supervision, the National Credit Union Administration,
28 the Federal Deposit Insurance Corporation, the Federal Trade
29 Commission, or the United States Department of Housing and
30 Urban Development; or

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